IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MRS JUSTICE T.MEENA KUMARI**

**and**
**THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY**

**WRIT APPEAL NO : 1985 of 2004**

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 29/09/2004 in WP NO : 14433 OF 2002 on the file of the High Court.)

Between:

Nizam Sugar Limited, Rep by its General Manager,
Lachayapet, Seethanagaram Mandal, Vizianagaram District.

**..... APPELLANT**

AND

1 Chelikani Sri Ranganayakulu, S/o. Late Gopal Rao,
R/o. D.No. 50-43-10, P & T Colony, Visakhapatnam.
2 The Presiding Officer, Industrial Tribunal-cum-Labour Court

Visakhapatnam, Visakhapatnam District.

**.....RESPONDENTS**

**Counsel for the Appellant : MR.N.VASUDEVA REDDY**

**Counsel for the first respondent : Mr. A.Srinivasa Sarma.**

**Counsel for the Respondent No.2 : GP FOR LABOUR**

**The Court made the following :**

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ORDER: (Per the Honourable Smt. Justice T.Meenakumari)

This writ appeal is filed by the writ petitioner-appellant herein aggrieved by the order in W.P. No: 14433 of 2002, dated 29.9.2004, under which the learned single Judge dismissed the said writ petition.

The appellant is the writ petitioner.

On the application filed by the 1st respondent in M.P.No:58 of 2000 seeking to determine the amounts due under voluntary retirement scheme, the Tribunal having come to the conclusion that there is an error in calculating the gratuity by the Management and the workman-1st respondent, is entitled to get the gratuity and ex gratia as per the provisions of the Gratuity Act, allowed the application for a sum of Rs.31,447.80 paise. Having aggrieved by the same, the writ petition has been filed by the Management-writ petitioner seeking to call for the records in M.P.No.58 of 2000, dated 20-2-2002, on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam and quash the same as arbitrary, illegal and without jurisdiction. The learned single Judge having observed that the application filed by the first respondent was rightly allowed by the second respondent and the principle laid down in the judgments of the apex Court reported in “Jeewanalal Ltd., Vs. Appellate Authority” amd Sri Digvijay Woollen Mills Vs. Mahendra P.Buch squarely cover the issue and the petitioner is liable to pay the said differential amount to the first respondent, dismissed the petition. Having aggrieved by the same, the present writ appeal is preferred by the writ petitioner.

Heard the learned counsel on either side.

It is contended by the learned counsel for the appellant that the provisions of the gratuity Act are not applicable for calculating the amounts and that the petition under section 33 (c) (2) of the Industrial Disputes, 1947 for recovery of difference of V.R.S. amounts is not maintainable in law. It is further contended that for filing an application, there should be a pre existing right, but in the instant case, there is no such pre existing right to claim the amount, which is only an exgratia and as such, the 1st respondent cannot claim it as a matter of right.

On the other hand, it is contended by the learned counsel for the 1st respondent that the last drawn wages of a month shall be divided by 26 days only, but not by 30 days and the finding of the learned single Judge in this regard, needs no interference.

We have perused the award and the order impugned and also the material available on record.

It is observed by the learned single Judge that as there is no settlement or agreement, unless otherwise expressly provided, it would be on the basis of daily wages worked out by dividing the last drawn wages a month by 26, multiplying the same by 45 days for payment of exgratia and therefore, the learned single Judge opined that the first respondent is entitled to the payment of exgratia amount for 45 days of emoluments for each completed year of 37 years service based on the calculation by dividing the monthly wages last drawn by him by 26 days. There is no dispute as to the above calculation, which is in conformity with the principles laid down by the Apex Court in the two decisions cited supra, but the controversy that remains for consideration in this appeal is as to whether there is any pre existing right to claim the amount in question and whether the provisions of the Gratuity Act enables the 1st respondent to claim the same.

On a perusal of the order of the tribunal, it is observed by the tribunal that even under the voluntary retirement Scheme claim also, the workman-1st respondent is entitled to get the gratuity and exgratia as per the provisions of the Gratuity Act.

But, as a matter of right, the 1st respondent has failed to adduce any material to show as to whether there is any pre existing right to claim the amount in question. Apart from that, in the absence of any provisions in the Gratuity Act, it cannot be inferred that the workman is entitled to claim the ex gratia.

In the circumstances of the case and in the absence of pre existing right and also in the absence of any specific provisions as to the claim of exgratia in the provisions of Gratuity Act, We are of the opinion that the 1st respondent is not entitled to claim the amount in question and consequently, the order of the Tribunal as well as the learned single judge, are liable to be set aside.

Accordingly, the Writ Appeal is allowed. Consequently, the order of the Tribunal as well as the learned single Judge, are set aside. No costs.

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Justice T.Meenakumari

Date : 16th December, 2004

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Justice B.Seshasayana Reddy

Dvs/Gurc.

Copies to the

1. Nizam Sugar Limited, Rep by its General Manager,
Lachayapet, Seethanagaram Mandal, Vizianagaram District.

2.The Presiding Officer, Industrial Tribunal-cum-Labour Court

Visakhapatnam, Visakhapatnam District.

3.Two CCs to the GP for Labour, High Court Buildings,

Hyderabad.(OUT)

4. Two CD copies.

**HONOURABLE SMT. JUSTICE T.MEENAKUMARI**

**&**

**HONOURABLE SRI JUSTICE B.SESHASSAYANA REDDY**

**W.A.No: 1985 of 2004**

**(Judgment delivered by Smt.Justice T.Meenakumari)**

16th December, 2004

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